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September 21, 2005

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: April 21, 2005

Case Number: TSO-0234

This Decision concerns the eligibility of XXXXX XXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual was granted a security clearance from DOE after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on February 23, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h and j. More specifically, the Notification Letter alleges that the individual has: 1) “[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability,” and 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Substance Abuse, Alcohol, in Early Full Remission. According to the DOE Psychiatrist’s report, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The DOE Psychiatrist further determined that the individual did not present adequate evidence of rehabilitation or reformation. The Notification Letter further indicates that the individual has had two alcohol-related arrests.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on April 21, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 26, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called his wife, his brother, his brother-in-law, his counselor, his supervisor, and a close friend who is also a co-worker. The transcript taken at the hearing will be hereinafter cited as "Tr.". Documents submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh." and "Ind. Exh." respectively.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual has been employed by a DOE contractor for 28 years, and was granted a security clearance as a condition of his employment. The individual's eligibility to hold a security clearance was called into question in July 1998, when the individual was arrested for Driving Under the Influence (DUI). On this occasion, the individual admittedly consumed three to four bourbon-and-okes before deciding to drive over to his friend's house. The individual failed the field sobriety test after being stopped by the police, and registered a blood alcohol level (BAL) of .11. The individual pleaded guilty and received a \$1500 fine and probation. The security concerns associated with this alcohol-related arrest were resolved by DOE Security and the individual was allowed to retain his security clearance.

However, the individual was again arrested on May 15, 2004, on a charge of Driving While Intoxicated (DWI). On this occasion, the individual was away on a fishing trip and was called from the lake site by a friend who needed help repairing a boat. While at the friend's house, the individual consumed two bourbon-and-okes, and a beer. On returning to the lake, the individual was confused by a road construction detour and turned the wrong way into a one-way lane. Upon being stopped by the police, it was discovered that the individual had an open container of bourbon-and-coke in his vehicle. The policeman administered a field sobriety test which the individual failed. The individual refused to take the breath test. The individual later pled guilty to the DWI charge.

As a result of the May 2004 DWI, it occurred to the individual that he may have a drinking problem and he immediately began complete abstinence, and sought counseling with his Employee Assistance Program (EAP) counselor. The EAP counselor evaluated the individual on May 26, 2004, and determined that there was an immediate need for intervention. The EAP counselor referred the individual to a five-week Intensive Outpatient Program (IOP). The EAP counselor also recommended attendance by the individual at Alcoholics Anonymous (AA) and aftercare counseling following completion of the IOP. The individual successfully completed the IOP on July 8, 2004, and began attending AA. However, due to a misunderstanding with the EAP counselor, the individual did not begin aftercare counseling until September 2004. At that time, the individual began seeing a therapist recommended by the EAP counselor every two weeks.

On July 27, 2004, DOE Security conducted a Personnel Security Interview (PSI) with the individual, to discuss the circumstances of his May 2004 DWI arrest. Pursuant to the PSI, the individual was referred to the DOE Psychiatrist who examined the individual's personnel security file and conducted a psychiatric evaluation of the individual on October 8, 2004. In her report dated October 17, 2004, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse, in Early Full Remission, based upon diagnostic criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the

DOE Psychiatrist's report, this is a mental condition that causes, or may cause, a significant defect in judgment or reliability.

The DOE Psychiatrist further opined in her report that the individual was without adequate evidence of reformation or rehabilitation. In this regard, the DOE Psychiatrist recommended as adequate evidence of rehabilitation that the individual continue in the aftercare program recommended by the EAP counselor for an additional six months. As adequate evidence of reformation, the DOE Psychiatrist recommended continued abstinence by the individual for one year beyond completion of the additional six months of aftercare treatment. In the alternative, if the individual chose not to continue in aftercare, the DOE Psychiatrist recommended two years of absolute sobriety as adequate evidence of reformation.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant

and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol

The individual has had two alcohol-related arrests, on a charge of DUI in July 1998, and on a charge of DWI in May 2004. In both instances, the individual admittedly consumed an excessive amount of alcohol before deciding to drive his vehicle. Tr. at 12, 14-15; DOE Exh. 30 (PSI Transcript) at 9-11. On the basis of this and other information provided during his psychiatric interview, the DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon *DSM-IV TR*. See DOE Exh. 12 (DOE Psychiatrist Report) at 14; Tr. at 134. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

B. Mitigating Evidence

The individual has presented substantial evidence in mitigation of the security concerns. I initially find it significant that following his DWI in May 2004, the individual immediately began abstinence and sought counseling with his EAP counselor on his own volition. Tr. at 75-76. The individual testified that he has remained abstinent since his DWI arrest, for 15 months at the time of the hearing. Tr. at 96. The individual's sustained abstinence was corroborated at the hearing by the testimony of his wife, brother, brother-in-law and close friend and co-worker, who each praised the individual for his serious commitment to maintaining his sobriety. See Tr. at 16, 40, 45, 55. The individual testified persuasively that he is very comfortable with his sobriety and has no urges to resume drinking. Tr. at 96-97.

In July 2004, the individual successfully completed his IOP program which required five weeks of daily counseling sessions. See DOE Exh. 14; Tr. at 76. The individual also began attending AA at that time, and has continued attending AA twice a week.

Tr. at 26-27, 90. While the individual does not have a formal AA sponsor, he has a mentor in his AA group with whom the individual confers on a regular basis. Tr. at 93. From September through November 2004, the individual engaged in bi-weekly aftercare sessions with a therapist recommended by his EAP counselor. Tr. at 81-82, 104.^{2/} In January 2005, the individual began sessions with his present counselor (Counselor), a psychologist, and has continued to see the Counselor on a monthly basis. Tr. at 90, 95. The individual had undergone six sessions with the Counselor by the time of the hearing. Tr. at 102. The Counselor testified at the hearing that he sees in the individual “a sincere desire to not drink again.” Tr. at 116. The Counselor gave the individual a very good prognosis, opining that “there is a very, very low probability of relapse on [the individual’s] part.” Tr. at 121.

The DOE Psychiatrist testified last at the hearing. In her report, issued in October 2004, the DOE Psychiatrist recommended six months of additional aftercare treatment to achieve adequate rehabilitation, and one year of sobriety from the date of her report to achieve adequate reformation from his past alcohol abuse. DOE Exh. 12 at 14. At the time of the hearing, the individual was short of this recommendation.^{3/} However, after considering the testimony and evidence presented by the individual, the DOE Psychiatrist modified her opinion, stating: “From what I heard now, I think the mitigating factors can override the lack of the months – the mathematical months in my requirement . . . I think at this point I will concur with [the Counselor]. I think he’s done enough to show adequate rehabilitation and reformation.” Tr. at 134-35. In view of the evidence presented and the revised opinion of the DOE Psychiatrist, I conclude that the individual has overcome the concerns of DOE Security stemming from his two alcohol-related arrests and the DOE Psychiatrist’s diagnosis of alcohol abuse.

III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. § 710.8(h) and (j) in suspending the individual’s request for an access authorization. However, for the reasons set forth in this Decision, I have determined that the individual has adequately mitigated the

^{2/} Due to a misunderstanding with the EAP counselor, the individual did not begin aftercare treatment immediately upon completing the IOP in July 2004, as originally recommended by the EAP counselor. See DOE Exh. 14; Tr. at 80, 85-86. However, the individual began aftercare sessions in September 2004, once he received notification. *Id.*

^{3/} In November 2004, the individual elected to discontinue aftercare treatment with the therapist recommended by the EAP counselor. Instead the individual continued in AA and began seeing his present Counselor in January 2005. Tr. at 90. While the individual had been abstinent for a total of 15 months at the time of the hearing, he had only nine months of sobriety since he saw the DOE Psychiatrist in October 2004.

associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's security clearance should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: September 21, 2005